



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

30 October 2009

Mr. Wayne Smith
P.O. Box 1635
Twain Harte, CA 95383

CERTIFIED MAIL
7009 0960 0000 4242 1217

**ORDER NO. R5-2009-0854 TO SUBMIT TECHNICAL REPORTS IN ACCORDANCE WITH
CALIFORNIA WATER CODE SECTION 13267, TWAIN HARTE SHELL,
22890 TWAIN HARTE DRIVE, TWAIN HARTE, TUOLUMNE COUNTY**

Enclosed is a copy of Technical Reporting Order No. R5-2009-0854 issued on 30 October 2009 in accordance with California Water Code section 13267 to Twain Harte Shell at 22890 Twain Harte Drive in Twain Harte (Site). The Order directs you to perform a 30-day public participation period and submit a work plan for well destruction by 30 November 2009.

In order to conserve paper, only the addressee on this letter is receiving the *Appendix A - Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites* (Appendix A - Reports), which is attached to and made part of the Order. A copy of Appendix A - Reports may be downloaded from the Central Valley Water Board website at http://www.waterboards.ca.gov/centralvalley/water_issues/underground_storage_tanks/tri-regionals_appendix_a.pdf.

If you have any questions, please contact Peter Minkel at (916) 464-4629 or pminkel@waterboards.ca.gov.


BRIAN NEWMAN, P.E.
Underground Storage Tank Program Manager

Enclosure: Technical Reporting Order No. R5-2009-0854

cc: Mr. Mark Owens, SWRCB, UST Cleanup Fund, Sacramento
Ms. Sheilah Lillie, Tuolumne County Health Department, Sonora
Mr. Glen White, American Geological Services, Sonora

California Environmental Protection Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TECHNICAL REPORTING ORDER R5-2009-0854
CALIFORNIA WATER CODE SECTION 13267
FOR

MR. WAYNE SMITH
TWIN HARTE SHELL
22890 TWIN HARTE DRIVE, TWIN HARTE, TUOLUMNE COUNTY

This Order is issued to Mr. Wayne Smith (hereafter Discharger) pursuant to California Water Code (CWC) section 13267, which authorizes the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board or Board) to compel the submission of technical reports.

The Executive Officer finds:

INTRODUCTION

1. Mr. Wayne Smith owns the property at 22890 Twain Harte Drive, Twain Harte, Tuolumne County (hereafter Site) and was operating petroleum underground storage tanks (USTs) at the site when an unauthorized release from the Site's UST system was discovered in March 1998.
2. In March 1998, during an upgrade to the USTs and associated product lines, gasoline odors were noted in the subsurface. Tuolumne County Environmental Health Department requested a remedial excavation to remove contaminated soil. Soil samples collected from the base of one of the USTs showed that an unauthorized release of petroleum hydrocarbons had occurred beneath the Site.
3. In an effort to evaluate and monitor the nature and extent of the petroleum release and its potential effect on human health and waters of the state, multiple soil, soil vapor, and groundwater samples were collected between March 1998 and April 2009 from the Site's identified hydrocarbon plume.
4. Remedial efforts have reduced petroleum constituent concentrations beneath the Site and only minor concentrations remain. Given Site conditions and the minor concentrations that remain, the residual petroleum constituents are expected to attenuate without migrating any significant distance. Therefore, the residual petroleum constituents are unlikely to pose a threat to human health or further affect waters of the state as they continue to degrade.
5. As part of the Site closure procedures, all record owners of fee title for parcels located within 200 feet of the Site are to be notified of the Site's pending closure review and given time to submit comments regarding the pending closure. All comments received during this public participation must be adequately addressed prior to case closure.
6. Proper abandonment of all Site monitoring wells is necessary to prevent them from acting as preferential pathways. These pathways have the potential to exacerbate the deleterious effects of an otherwise minor surface spill that may occur in the future.

7. The Discharger has not conducted public participation activities or abandoned the Site's wells and other subsurface conduits.

LEGAL PROVISIONS

8. CWC section 13267 reads, in part:

(b)(1) In conducting an investigation . . . , the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

As described in Finding No. 3 numerous wells were drilled to evaluate and remediate contamination at the Site. As described in Finding No. 6, these wells provide preferential pathways that would allow an otherwise minor surface spill to contaminate groundwater. It is reasonable for the Board to require the Discharger to submit a technical report describing how the Discharger will destroy these wells. The Board is requiring the Discharger to submit this report for the reasons described in this Order, to ensure protection of waters of the state, and to protect public health and the environment.

9. CWC section 13268 reads, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d) . . .

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

Failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action being taken against the Discharger, which may include the imposition of administrative civil liability pursuant to

CWC section 13268. Since petroleum constituents are considered hazardous waste under Health and Safety Code section 25117 and under Title 22 section 66261.126 Appendix X, the Central Valley Water Board may impose administrative civil liability of up to \$5,000 per day if the Discharger fails to submit the required work plan by the date set forth below.

10. The California Code of Regulations, title 23, section 2720, defines a responsible party as:

... any person who owns or operates an underground storage tank used for the storage of an hazardous substance... any person who owned or operated the underground storage tank immediately before the discontinuation of its use... any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred, and any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

A responsible party has a legal obligation to investigate and remediate contamination. As described in Findings No. 1, the Discharger is subject to this Order because it owns the property and operated the UST system where an unauthorized release of a hazardous substance from a UST has occurred. Therefore, the Discharger is a "person who has discharged ... waste" within the meaning of CWC section 13267.

11. Compliance with Central Valley Water Board directives is mandatory in order to be eligible for reimbursement of corrective action costs from the State's Underground Storage Tank Cleanup Fund according to California Code of Regulations, title 23, section 2812.2.
12. The issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code section 21000, et seq.), pursuant to California Code of Regulations, title 14, section 15061(b)(3), because the Board can find with certainty that the preparation of a workplan, as described in this Order, will not result in a significant impact to the environment.
13. All work should be performed according to the *Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites*, which is attached hereto and made part of this Order. All work must be completed under all permits required by State, County, and/or Local agencies, and all reports must be submitted to the Central Valley Water Board.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to CWC section 13267 and under penalty of perjury under the laws of the State of California, the Discharger shall submit a **work plan** by **30 November 2009** to abandon all wells and other subsurface conduits associated with the Site, to conduct public participation activities, and to dispose of any residual waste remaining at the Site. The work plan shall include a time schedule to complete the proposed work and to submit a report documenting the results of the work.

The work plan shall include the following items:

- a. Mailing list of all record owners of fee title for parcels within 200 feet of the Site and a Fact Sheet describing the site investigation and cleanup activities that took place.
- b. Proposal for proper abandonment of all groundwater monitoring wells associated with the UST investigation and cleanup at the Site.
- c. Description of and proposal for the proper disposal of any residual waste remaining onsite as a result of the Site investigation, cleanup, and monitoring, including but not limited to drill cuttings and monitoring well purge water.

The Tuolumne County Environmental Health Department maintains jurisdictional authority regarding well abandonment; therefore, the Discharger shall obtain all applicable permits and clearances required to destroy the Site's wells.


As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional under penalty of perjury under the laws of the State of California.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality, or they will be provided upon request.

This Order is effective upon the date of signature.

Ordered by:


For PAMELA C. CREEDON, Executive Officer

10/30/2009

(Date)